

ASSEMBLY BILL

No. 2700

Introduced by Assembly Member Nazarian

February 21, 2014

An act to amend Section 17053.85 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2700, as introduced, Nazarian. Personal income taxes: credits: film.

The Personal Income Tax Law allows various credits against the taxes imposed by that law, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, as provided.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.85 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17053.85. (a) (1) For taxable years beginning on or after
- 4 January 1, 2011, there shall be allowed to a qualified taxpayer a
- 5 credit against the "net tax," as defined in Section 17039, in an

1 amount equal to the applicable percentage, as specified in
2 paragraph (4), of the qualified expenditures for the production of
3 a qualified motion picture in California.

4 (2) The credit shall be allowed for the taxable year in which the
5 California Film Commission issues the credit certificate pursuant
6 to subdivision (g) for the qualified motion picture, and shall be for
7 the applicable percentage of all qualified expenditures paid or
8 incurred by the qualified taxpayer in all taxable years for that
9 qualified motion picture.

10 (3) The amount of the credit allowed to a qualified taxpayer
11 shall be limited to the amount specified in the credit certificate
12 issued to the qualified taxpayer by the California Film Commission
13 pursuant to subdivision (g).

14 (4) For purposes of paragraphs (1) and (2), the applicable
15 percentage shall be:

16 (A) Twenty percent of the qualified expenditures attributable
17 to the production of a qualified motion picture in California.

18 (B) Twenty-five percent of the qualified expenditures
19 attributable to the production of a qualified motion picture in
20 California where the qualified motion picture is a television series
21 that relocated to California or an independent film.

22 (b) For purposes of this section:

23 (1) "Ancillary product" means any article for sale to the public
24 that contains a portion of, or any element of, the qualified motion
25 picture.

26 (2) "Budget" means an estimate of all expenses paid or incurred
27 during the production period of a qualified motion picture. It shall
28 be the same budget used by the qualified taxpayer and production
29 company for all qualified motion picture purposes.

30 (3) "Clip use" means a use of any portion of a motion picture,
31 other than the qualified motion picture, used in the qualified motion
32 picture.

33 (4) "Credit certificate" means the certificate issued by the
34 California Film Commission pursuant to subparagraph (C) of
35 paragraph (2) of subdivision (g).

36 (5) (A) "Employee fringe benefits" means the amount allowable
37 as a deduction under this part to the qualified taxpayer involved
38 in the production of the qualified motion picture, exclusive of any
39 amounts contributed by employees, for any year during the
40 production period with respect to any of the following:

1 (i) Employer contributions under any pension, profit-sharing,
2 annuity, or similar plan.

3 (ii) Employer-provided coverage under any accident or health
4 plan for employees.

5 (iii) The employer's cost of life or disability insurance provided
6 to employees.

7 (B) Any amount treated as wages under clause (i) of
8 subparagraph (A) of paragraph (18) shall not be taken into account
9 under this paragraph.

10 (6) "Independent film" means a motion picture with a minimum
11 budget of one million dollars (\$1,000,000) and a maximum budget
12 of ten million dollars (\$10,000,000) that is produced by a company
13 that is not publicly traded and publicly traded companies do not
14 own, directly or indirectly, more than 25 percent of the producing
15 company.

16 (7) "Licensing" means any grant of rights to distribute the
17 qualified motion picture, in whole or in part.

18 (8) "New use" means any use of a motion picture in a medium
19 other than the medium for which it was initially created.

20 (9) (A) "Postproduction" means the final activities in a qualified
21 motion picture's production, including editing, foley recording,
22 automatic dialogue replacement, sound editing, scoring and music
23 editing, beginning and end credits, negative cutting, negative
24 processing and duplication, the addition of sound and visual effects,
25 soundmixing, film-to-tape transfers, encoding, and color correction.

26 (B) "Postproduction" does not include the manufacture or
27 shipping of release prints.

28 (10) "Preproduction" means the process of preparation for actual
29 physical production which begins after a qualified motion picture
30 has received a firm agreement of financial commitment, or is
31 greenlit, with, for example, the establishment of a dedicated
32 production office, the hiring of key crew members, and includes,
33 but is not limited to, activities that include location scouting and
34 execution of contracts with vendors of equipment and stage space.

35 (11) "Principal photography" means the phase of production
36 during which the motion picture is actually shot, as distinguished
37 from preproduction and postproduction.

38 (12) "Production period" means the period beginning with
39 preproduction and ending upon completion of postproduction.

1 (13) “Qualified entity” means a personal service corporation as
2 defined in Section 269A(b)(1) of the Internal Revenue Code, a
3 payroll services corporation, or any entity receiving qualified wages
4 with respect to services performed by a qualified individual.

5 (14) (A) “Qualified individual” means any individual who
6 performs services during the production period in an activity related
7 to the production of a qualified motion picture.

8 (B) “Qualified individual” shall not include either of the
9 following:

10 (i) Any individual related to the qualified taxpayer as described
11 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
12 Revenue Code.

13 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
14 the Internal Revenue Code, of the qualified taxpayer.

15 (15) (A) “Qualified motion picture” means a motion picture
16 that is produced for distribution to the general public, regardless
17 of medium, that is one of the following:

18 (i) A feature with a minimum production budget of one million
19 dollars (\$1,000,000) and a maximum production budget of
20 seventy-five million dollars (\$75,000,000).

21 (ii) A movie of the week or miniseries with a minimum
22 production budget of five hundred thousand dollars (\$500,000).

23 (iii) A new television series produced in California with a
24 minimum production budget of one million dollars (\$1,000,000)
25 licensed for original distribution on basic cable.

26 (iv) An independent film.

27 (v) A television series that relocated to California.

28 (B) To qualify as a “qualified motion picture,” all of the
29 following conditions shall be satisfied:

30 (i) At least 75 percent of the production days occur wholly in
31 California or 75 percent of the production budget is incurred for
32 payment for services performed within the state and the purchase
33 or rental of property used within the state.

34 (ii) Production of the qualified motion picture is completed
35 within 30 months from the date on which the qualified taxpayer’s
36 application is approved by the California Film Commission. For
37 purposes of this section, a qualified motion picture is “completed”
38 when the process of postproduction has been finished.

1 (iii) The copyright for the motion picture is registered with the
2 United States Copyright Office pursuant to Title 17 of the United
3 States Code.

4 (iv) Principal photography of the qualified motion picture
5 commences after the date on which the application is approved by
6 the California Film Commission, but no later than 180 days after
7 the date of that approval.

8 (C) For the purposes of subparagraph (A), in computing the
9 total wages paid or incurred for the production of a qualified
10 motion picture, all amounts paid or incurred by all persons or
11 entities that share in the costs of the qualified motion picture shall
12 be aggregated.

13 (D) “Qualified motion picture” shall not include commercial
14 advertising, music videos, a motion picture produced for private
15 noncommercial use, such as weddings, graduations, or as part of
16 an educational course and made by students, a news program,
17 current events or public events program, talk show, game show,
18 sporting event or activity, awards show, telethon or other
19 production that solicits funds, reality television program, clip-based
20 programming if more than 50 percent of the content is comprised
21 of licensed footage, documentaries, variety programs, daytime
22 dramas, strip shows, one-half hour (air time) episodic television
23 shows, or any production that falls within the recordkeeping
24 requirements of Section 2257 of Title 18 of the United States Code.

25 (16) “Qualified expenditures” means amounts paid or incurred
26 to purchase or lease tangible personal property used within this
27 state in the production of a qualified motion picture and payments,
28 including qualified wages, for services performed within this state
29 in the production of a qualified motion picture.

30 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
31 or incurred qualified expenditures and has been issued a credit
32 certificate by the California Film Commission pursuant to
33 subdivision (g).

34 (B) In the case of any pass-thru entity, the determination of
35 whether a taxpayer is a qualified taxpayer under this section shall
36 be made at the entity level and any credit under this section is not
37 allowed to the pass-thru entity, but shall be passed through to the
38 partners or shareholders in accordance with applicable provisions
39 of Part 10 (commencing with Section 17001) or Part 11
40 (commencing with Section 23001). For purposes of this paragraph,

1 “pass-thru entity” means any entity taxed as a partnership or “S”
2 corporation.

3 (18) (A) “Qualified wages” means all of the following:

4 (i) Any wages subject to withholding under Division 6
5 (commencing with Section 13000) of the Unemployment Insurance
6 Code that were paid or incurred by any taxpayer involved in the
7 production of a qualified motion picture with respect to a qualified
8 individual for services performed on the qualified motion picture
9 production within this state.

10 (ii) The portion of any employee fringe benefits paid or incurred
11 by any taxpayer involved in the production of the qualified motion
12 picture that are properly allocable to qualified wage amounts
13 described in clause (i).

14 (iii) Any payments made to a qualified entity for services
15 performed in this state by qualified individuals within the meaning
16 of paragraph (14).

17 (iv) Remuneration paid to an independent contractor who is a
18 qualified individual for services performed within this state by that
19 qualified individual.

20 (B) “Qualified wages” shall not include any of the following:

21 (i) Expenses, including wages, related to new use, reuse, clip
22 use, licensing, secondary markets, or residual compensation, or
23 the creation of any ancillary product, including, but not limited to,
24 a soundtrack album, toy, game, trailer, or teaser.

25 (ii) Expenses, including wages, paid or incurred with respect to
26 acquisition, development, turnaround, or any rights thereto.

27 (iii) Expenses, including wages, related to financing, overhead,
28 marketing, promotion, or distribution of a qualified motion picture.

29 (iv) Expenses, including wages, paid per person per qualified
30 motion picture for writers, directors, music directors, music
31 composers, music supervisors, producers, and performers, other
32 than background actors with no scripted lines.

33 (19) “Residual compensation” means supplemental
34 compensation paid at the time that a motion picture is exhibited
35 through new use, reuse, clip use, or in secondary markets, as
36 distinguished from payments made during production.

37 (20) “Reuse” means any use of a qualified motion picture in the
38 same medium for which it was created, following the initial use
39 in that medium.

1 (21) "Secondary markets" means media in which a qualified
2 motion picture is exhibited following the initial media in which it
3 is exhibited.

4 (22) "Television series that relocated to California" means a
5 television series, without regard to episode length or initial media
6 exhibition, that filmed all of its prior season or seasons outside of
7 California and for which the taxpayer certifies that the credit
8 provided pursuant to this section is the primary reason for
9 relocating to California.

10 (c) (1) Notwithstanding any other law, a qualified taxpayer
11 may sell any credit allowed under this section that is attributable
12 to an independent film, as defined in paragraph (6) of subdivision
13 (b), to an unrelated party.

14 (2) The qualified taxpayer shall report to the Franchise Tax
15 Board prior to the sale of the credit, in the form and manner
16 specified by the Franchise Tax Board, all required information
17 regarding the purchase and sale of the credit, including the social
18 security or other taxpayer identification number of the unrelated
19 party to whom the credit has been sold, the face amount of the
20 credit sold, and the amount of consideration received by the
21 qualified taxpayer for the sale of the credit.

22 (3) In the case where the credit allowed under this section
23 exceeds the "net tax," the excess credit may be carried over to
24 reduce the "net tax" in the following taxable year, and succeeding
25 five taxable years, if necessary, until the credit has been exhausted.

26 (4) A credit shall not be sold pursuant to this subdivision to
27 more than one taxpayer, nor may the credit be resold by the
28 unrelated party to another taxpayer or other party.

29 (5) A party that has acquired tax credits under this section shall
30 be subject to the requirements of this section.

31 (6) In no event may a qualified taxpayer assign or sell any tax
32 credit to the extent the tax credit allowed by this section is claimed
33 on any tax return of the qualified taxpayer.

34 (7) In the event that both the taxpayer originally allocated a
35 credit under this section by the California Film Commission and
36 a taxpayer to whom the credit has been sold both claim the same
37 amount of credit on their tax returns, the Franchise Tax Board may
38 disallow the credit of either taxpayer, so long as the statute of
39 limitations upon assessment remains open.

(8) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(9) Subdivision (g) of Section 17039 shall not apply to any credit sold pursuant to this subdivision.

(10) For purposes of this subdivision, the unrelated party or parties that purchase a credit pursuant to this subdivision shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

(1) Identification of each qualified individual.

(2) The specific start and end dates of production.

(3) The total wages paid.

(4) The amount of qualified wages paid to each qualified individual.

(5) The copyright registration number, as reflected on the certificate of registration issued under the authority of Section 410 of Title 17 of the United States Code, relating to registration of claim and issuance of certificate. The registration number shall be provided on the return claiming the credit.

(6) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.

(7) Information to substantiate its qualified expenditures.

(8) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (g) necessary to verify the amount of credit claimed.

(e) The California Film Commission may prescribe rules and regulations to carry out the purposes of this section including any rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. The regulations shall include provisions to set aside a percentage of annual credit allocations for independent films.

(f) If the qualified taxpayer fails to provide the copyright registration number as required in paragraph (5) of subdivision

1 (d), the credit shall be disallowed and assessed and collected under
2 Section 19051 until the procedures are satisfied.

3 (g) For purposes of this section, the California Film Commission
4 shall do the following:

5 (1) On or after July 1, 2009, and before July 1, 2017, allocate
6 tax credits to applicants.

7 (A) Establish a procedure for applicants to file with the
8 California Film Commission a written application, on a form jointly
9 prescribed by the California Film Commission and the Franchise
10 Tax Board for the allocation of the tax credit. The application shall
11 include, but not be limited to, the following information:

12 (i) The budget for the motion picture production.

13 (ii) The number of production days.

14 (iii) A financing plan for the production.

15 (iv) The diversity of the workforce employed by the applicant,
16 including, but not limited to, the ethnic and racial makeup of the
17 individuals employed by the applicant during the production of
18 the qualified motion picture, to the extent possible.

19 (v) All members of a combined reporting group, if known at
20 the time of the application.

21 (vi) Financial information, if available, including, but not limited
22 to, the most recently produced balance sheets, annual statements
23 of profits and losses, audited or unaudited financial statements,
24 summary budget projections or results, or the functional equivalent
25 of these documents of a partnership or owner of a single member
26 limited liability company that is disregarded pursuant to Section
27 23038. The information provided pursuant to this clause shall be
28 confidential and shall not be subject to public disclosure.

29 (vii) The names of all partners in a partnership not publicly
30 traded or the names of all members of a limited liability company
31 classified as a partnership not publicly traded for California income
32 tax purposes that have a financial interest in the applicant's
33 qualified motion picture. The information provided pursuant to
34 this clause shall be confidential and shall not be subject to public
35 disclosure.

36 (viii) Detailed narratives, for use only by the Legislative
37 Analyst's Office in conducting a study of the effectiveness of this
38 credit, that describe the extent to which the credit is expected to
39 influence or affect filming and other business location decisions,

1 hiring decisions, salary decisions, and any other financial matters
2 of the applicant.

3 (ix) Any other information deemed relevant by the California
4 Film Commission or the Franchise Tax Board.

5 (B) Establish criteria, consistent with the requirements of this
6 section, for allocating tax credits.

7 (C) Determine and designate applicants who meet the
8 requirements of this section.

9 (D) Process and approve, or reject, all applications on a
10 first-come-first-served basis.

11 (E) Subject to the annual cap established as provided in
12 subdivision (i), allocate an aggregate amount of credits under this
13 section and Section 23685, and allocate any carryover of
14 unallocated credits from prior years.

15 (2) Certify tax credits allocated to qualified taxpayers.

16 (A) Establish a verification procedure for the amount of qualified
17 expenditures paid or incurred by the applicant, including, but not
18 limited to, updates to the information in subparagraph (A) of
19 paragraph (1) of subdivision (g).

20 (B) Establish audit requirements that must be satisfied before
21 a credit certificate may be issued by the California Film
22 Commission.

23 (C) (i) Establish a procedure for a qualified taxpayer to report
24 to the California Film Commission, prior to the issuance of a credit
25 certificate, the following information:

26 (I) If readily available, a list of the states, provinces, or other
27 jurisdictions in which any member of the applicant's combined
28 reporting group in the same business unit as the qualified taxpayer
29 that, in the preceding calendar year, has produced a qualified
30 motion picture intended for release in the United States market.
31 For purposes of this clause, "qualified motion picture" shall not
32 include any episodes of a television series that were complete or
33 in production prior to July 1, 2009.

34 (II) Whether a qualified motion picture described in subclause
35 (I) was awarded any financial incentive by the state, province, or
36 other jurisdiction that was predicated on the performance of
37 primary principal photography or postproduction in that location.

38 (ii) The California Film Commission may provide that the report
39 required by this subparagraph be filed in a single report provided

1 on a calendar year basis for those qualified taxpayers that receive
2 multiple credit certificates in a calendar year.

3 (D) Issue a credit certificate to a qualified taxpayer upon
4 completion of the qualified motion picture reflecting the credit
5 amount allocated after qualified expenditures have been verified
6 under this section. The amount of credit shown in the credit
7 certificate shall not exceed the amount of credit allocated to that
8 qualified taxpayer pursuant to this section.

9 (3) Obtain, when possible, the following information from
10 applicants that do not receive an allocation of credit:

11 (A) Whether the qualified motion picture that was the subject
12 of the application was completed.

13 (B) If completed, in which state or foreign jurisdiction was the
14 primary principal photography completed.

15 (C) Whether the applicant received any financial incentives
16 from the state or foreign jurisdiction to make the qualified motion
17 picture in that location.

18 (4) Provide the Legislative Analyst's Office, upon request, any
19 or all application materials or any other materials received from,
20 or submitted by, the applicants, in electronic format when available,
21 including, but not limited to, information provided pursuant to
22 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

23 (5) The information provided to the California Film Commission
24 pursuant to this section shall constitute confidential tax information
25 for purposes of Article 2 (commencing with Section 19542) of
26 Chapter 7 of Part 10.2.

27 (h) (1) The California Film Commission shall annually provide
28 the ~~Legislative Analyst's Office, the Franchise Tax Board,~~
29 *Franchise Tax Board, the Legislative Analyst's Office*, and the
30 board with a list of qualified taxpayers and the tax credit amounts
31 allocated to each qualified taxpayer by the California Film
32 Commission. The list shall include the names and taxpayer
33 identification numbers, including taxpayer identification numbers
34 of each partner or shareholder, as applicable, of the qualified
35 taxpayer.

36 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the
37 California Film Commission shall annually post on its Internet
38 Web site and make available for public release the following:

39 (i) A table which includes all of the following information: a
40 list of qualified taxpayers and the tax credit amounts allocated to

1 each qualified taxpayer by the California Film Commission, the
2 number of production days in California the qualified taxpayer
3 represented in its application would occur, the number of California
4 jobs that the qualified taxpayer represented in its application would
5 be directly created by the production, and the total amount of
6 qualified expenditures expected to be spent by the production.

7 (ii) A narrative staff summary describing the production of the
8 qualified taxpayer as well as background information regarding
9 the qualified taxpayer contained in the qualified taxpayer's
10 application for the credit.

11 (B) Nothing in this subdivision shall be construed to make the
12 information submitted by an applicant for a tax credit under this
13 section a public record.

14 (i) (1) The aggregate amount of credits that may be allocated
15 in any fiscal year pursuant to this section and Section 23685 shall
16 be an amount equal to the sum of all of the following:

17 (A) One hundred million dollars (\$100,000,000) in credits for
18 the 2009–10 fiscal year and each fiscal year thereafter, through
19 and including the 2016–17 fiscal year.

20 (B) The unused allocation credit amount, if any, for the
21 preceding fiscal year.

22 (C) The amount of previously allocated credits not certified.

23 (2) If the amount of credits applied for in any particular fiscal
24 year exceeds the aggregate amount of tax credits authorized to be
25 allocated under this section, such excess shall be treated as having
26 been applied for on the first day of the subsequent fiscal year.
27 However, credits may not be allocated from a fiscal year other
28 than the fiscal year in which the credit was originally applied for
29 or the immediately succeeding fiscal year.

30 (3) Notwithstanding the foregoing, the California Film
31 Commission shall set aside up to ten million dollars (\$10,000,000)
32 of tax credits each fiscal year for independent films allocated in
33 accordance with rules and regulations developed pursuant to
34 subdivision (e).

35 (4) Any act that reduces the amount that may be allocated
36 pursuant to paragraph (1) constitutes a change in state taxes for
37 the purpose of increasing revenues within the meaning of Section
38 3 of Article XIII A of the California Constitution and may be passed
39 by not less than two-thirds of all Members elected to each of the
40 two houses of the Legislature.

1 (j) The California Film Commission shall have the authority to
2 allocate tax credits in accordance with this section and in
3 accordance with any regulations prescribed pursuant to subdivision
4 (e) upon adoption.

O